

Memorandum of Understanding
In connection with the Gateway Program

by and among the

**United States Department of Transportation, National Railroad Passenger Corporation,
the Port Authority of New York and New Jersey and New Jersey Transit Corporation**

June, 2016

This Memorandum of Understanding ("MOU") is made this 20th day of June, 2016 by and among the United States Department of Transportation ("USDOT"), National Railroad Passenger Corporation, a corporation organized under 49 U.S.C. §24101, *et seq.* and the laws of the District of Columbia, with its principal office located at 60 Massachusetts Avenue, N.E., Washington, DC 20002 ("Amtrak"), The Port Authority of New York and New Jersey, an agency of the States of New York and New Jersey, created in 1921 by a Compact which received congressional consent, with offices at 4 World Trade Center, 150 Greenwich Street, New York, New York 10007 ("PANYNJ"), and New Jersey Transit Corporation, created by the Public Transportation Act of 1979 (N.J.S.A. 27:25-1 *et seq.*), with its principal office located at 1 Penn Plaza East, Newark, New Jersey 07105 ("NJ TRANSIT") (individually a "Party" and collectively the "Parties").

WITNESSETH:

Whereas, Governor Andrew M. Cuomo, Governor Chris Christie, U.S. Senator Charles E. Schumer and U.S. Senator Cory Booker announced on November 12, 2015, the intention to create a special purpose entity to be known as the Gateway Development Corporation ("GDC"), whose mission will be the effectuation of the Gateway Program, a multi-billion dollar set of projects on the Northeast Corridor between Newark, New Jersey and New York City. An overview of the Gateway Program and its principal program elements is attached as Exhibit A; and

Whereas, one of the region's and the Gateway Program's most critical and major infrastructure components is the Hudson Tunnel Project, described in Exhibit A, which would preserve existing Amtrak and NJ TRANSIT service and improve an essential portion of Amtrak's eight-state Northeast Corridor that connects the states of New York and New Jersey and provides intercity passenger rail service and interstate commuter rail service from New Jersey into Pennsylvania Station New York; and

Whereas, U.S. Secretary of Transportation Anthony R. Foxx has identified the Hudson Tunnel Project as critical to the continued mobility and economic health of the New York City - New Jersey region and the Northeast Corridor; and

Whereas, the existing tunnel, consisting of two tubes, which was opened in 1910 and severely damaged by Superstorm Sandy in October 2012. While the existing tubes must be completely refurbished as soon as possible, it is not possible to repair the tunnel without closing one tube entirely at a time. Construction of an additional two tube tunnel will allow the existing

level of passenger rail service to continue during the several years necessary for the existing tunnel to be refurbished; and

Whereas, the Hudson Tunnel Project is currently undergoing environmental review under the National Environmental Policy Act of 1969 (“NEPA”), which is being jointly led by USDOT’s Federal Railroad Administration (“FRA”) and NJ TRANSIT; and

Whereas, the PANYNJ is undertaking necessary due diligence leading to the creation of the GDC, however, during this due diligence period (“Interim Period”), on-going planning, environmental work, preliminary engineering, design and construction of elements of the Gateway Program must continue without delay; and

Whereas, pending creation of the GDC, the USDOT, Amtrak, PANYNJ and NJ TRANSIT, together with representatives of the offices of the governors of New York and New Jersey, Senators Booker and Schumer, as well as U.S. Senator Robert Menendez, have formed an Executive Committee and have commenced planning for the Hudson Tunnel Project and Gateway Program, including the formation of the GDC;

Now, therefore, the Parties desire to set forth their understanding as to how they will work together in this Interim Period and after the GDC is formally created. This MOU will continue in force until it is expressly superseded in whole or in part by the GDC Board.

Section 1. Executive Committee.

The Executive Committee will provide leadership and oversight relating to the advancement of the Gateway Program. Subject to Sections 4 and 6 of this MOU, the Executive Committee will review the work of the working groups described below, provide policy direction and guidance, and brief stakeholders, as appropriate, other than the Parties. The Executive Committee will meet bi-weekly or on an as needed basis. Members of the Executive Committee are listed in Exhibit B.

Section 2. Working Groups.

Five working groups have been formed by the Parties consisting of staff members from each of the entities represented on the Executive Committee to focus on early actions:

- Environmental Reviews and Permitting
- Governance
- Construction, Preliminary Engineering, Office Space
- Funding and Finance
- Rail Operations

Members and group leaders of the working groups are listed in Exhibit B.

Section 3. Reporting and Decision Making.

The working groups will formulate written short and long-term goals, specific deliverables and schedules for action which will be presented by the group leaders to the Executive Committee at meetings convened for this purpose. Subject to Sections 4 and 6 of this MOU, the Executive Committee will review the working group plans, recommend adjustments, resolve any disputes and coordinate the actions of the working groups.

Section 4. Environmental Reviews.

Subject to this Section and Section 6 of this MOU, the Parties agree that they will cooperate in facilitating the environmental review process for the Hudson Tunnel Project and other elements of the Gateway Program, including the planning, scoping, third party consultation and outreach involved in such efforts to the extent and in the manner allowed by applicable law, regulation and guidance.

Components of the Gateway Program, including the Hudson Tunnel Project, are currently subject to, or will be subject to Federal environmental review including NEPA. The Parties understand the importance of an environmental review that complies with applicable Federal law and agree that notwithstanding any other provision of this MOU the Federal NEPA lead agency or agencies will be responsible for decision making during the NEPA process and for determining what information can properly be shared with the other Parties.

Section 5. Governance.

The Parties understand that when the GDC is created, such entity will be governed by certain documents, including by-laws, through a four-member Board, consisting of representatives of USDOT and Amtrak and one representative of each state who will also serve as members of the Board of Commissioners of the PANYNJ. During the Interim Period, decisions may arise on major matters which, after GDC creation, will fall under the jurisdiction of the GDC, such as submission of federal and/or state grant and loan applications. The Parties agree that during the Interim Period, those decisions will be made by unanimous consent of the members (subject to Sections 4 and 6 of this MOU) who will comprise the future Board of the GDC after consultation with the Executive Committee. After creation of the GDC, the Executive Committee, as currently composed, will continue to provide project oversight and inter-agency/inter-governmental coordination, unless it is expressly superseded in whole or in part by the GDC Board.

Section 6. USDOT Participation

Notwithstanding anything herein, USDOT's participation in this MOU, on the Executive Committee, on the Working Groups and otherwise is in the USDOT individuals' official capacity. The Parties understand that USDOT's governmental functions supersede any language that may be understood as contrary to that function in this MOU. The Parties understand further that this MOU does not subject USDOT to the oversight of or direction from any other Party. The Parties also understand that the USDOT will be responsible for all decision making relating

to reviews of applications for financial assistance submitted to the USDOT or any agency within the USDOT. The USDOT will not participate in any pre-decisional activity.

USDOT may provide technical assistance and engage in discussions regarding GDC's financial plans. USDOT will not participate in any final decisions by the Executive Committee to apply for any Federal financial assistance, including, but not limited to, the Transportation Infrastructure Finance and Innovation Act (TIFIA) program loans or loan guarantees, the Railroad Rehabilitation and Improvement Financing (RRIF) program loans or loan guarantees, Private Activity Bonds (PABs) allocations, and any other grant program applications administered by USDOT. USDOT will not participate in any decisions by the Executive Committee on any NEPA action involving a Federal agency.

Section 7. Existing Agreements.

Existing agreements by or between the Parties and others in connection with the Hudson Tunnel Project and Gateway Program shall remain in full force and effect as to the parties to the agreements. If any conflicting language between the MOU and existing agreements, then the existing agreements govern.

Section 8. Document Sharing.

The Parties will develop a list of existing agreements, which will be updated from time to time at the direction of the Executive Committee. The list will serve as the master document control repository until such time as the GDC develops a successor repository. This will promote transparency, efficient collaboration, management of project risks and fiscal responsibility.

The Parties agree to make available to each other appropriate plans, designs, and other documents, subject to Sections 4, 6, and 7 of this MOU, that have been or will be produced by the Parties or their consultants, in connection with the Hudson Tunnel Project and Gateway Program, subject to appropriate confidentiality agreements between the Parties, as necessary, and applicable provisions of state and Federal law, including the Freedom of Information Act and the Trade Secrets Act.

Section 9. Hudson Tunnel Project and Related Work.

Before the creation of the GDC, USDOT, Amtrak and NJ TRANSIT have been advancing the Hudson Tunnel Project and other elements of the Gateway Program independently or in collaboration with each other. The Gateway Program is moving ahead as follows:

- Amtrak is designing the temporary and permanent repairs of the existing Hudson tunnel, through a consultant contract with Jacobs Engineering.
- Amtrak and NJ TRANSIT entered into a Memorandum of Agreement on November 23, 2015 ("Amtrak/NJT MOA") in connection with the environmental review work to be performed, with USDOT's FRA as the joint-lead agency:
 - In connection with the environmental review work, on March 10, 2016, NJ TRANSIT selected AKRF Environmental Planning & Engineering Consultants

(“AKRF”) and issued a limited notice to proceed to AKRF to serve as its environmental consultant.

- Amtrak will complete the preliminary engineering (“PE”) work and provide that PE to NJ TRANSIT and AKRF, subject to a funding agreement between the Parties.
- USDOT has provided \$235 million for the construction of a right-of-way preservation project for a potential future tunnel from 10th Avenue to 11th Avenue in the Eastern Rail Yard Section of the John D. Caemmerer East Side Yard in New York City. Construction by Amtrak began in August 2013.
- Amtrak is constructing the second segment of this right-of-way preservation project under the 11th Avenue viaduct. Work began in December 2014.
- Amtrak is designing the third segment of the new tunnel right-of-way preservation project through a consultant contract with the Gateway Trans-Hudson Partnership, a joint venture of the engineering firms WSP-Parsons Brinckerhoff, AECOM and STV.
- In October 2009, NJ TRANSIT and Amtrak entered into an Agreement for the Design Phase of the Portal Bridge Capacity Enhancement Project. Final Design is complete for Portal Bridge North.
- USDOT awarded a \$16 million TIGER Grant to NJ TRANSIT in October 2015 to undertake five “early action” construction projects that need to be in place prior to the full replacement of the Portal Bridge (to be called Portal Bridge North). USDOT also provided \$38.5 million in American Recovery and Reinvestment Act funding and NJ TRANSIT provided \$16.5 million to complete the final design for the new Portal Bridge North.
- NJ TRANSIT and Amtrak are in final negotiations of an agreement for Construction Phase I Activities for the Portal Bridge Capacity Enhancement Project. Upon execution, and upon receipt of notice of grant obligation of the \$16 million TIGER Grant from USDOT with a \$4 million match from NJ TRANSIT, NJ TRANSIT plans to advertise for construction of this work during the Second Quarter of 2016.

Section 10. Funding and Finance.

Subject to Sections 4 and 6 of this MOU, the GDC will have the responsibility to develop a funding and financing plan for the Gateway Program.

Section 11. Performance of Work, Procurement of Goods and Services.

Whenever work is performed or goods or services are procured in connection with the Hudson Tunnel Project and other elements of the Gateway Program by a Party, either by contract or by its own personnel, it will be performed in the usual manner, subject to the applicable laws, rules, policies and procedures governing that Party (including Federal requirements associated with the use of Federal funds), and not subject to the management of any other Party to this MOU. The Parties agree to cooperate and coordinate with each other, and to report on the status of any such work or procurement.

Section 12. Employment of Personnel by the Parties.

The Parties shall provide their own employees to perform the work under this MOU or as otherwise agreed upon in a shared arrangement. Employees of any one of the Parties shall not be considered employees of any other Party to this MOU for the purposes of management, payroll, benefits, retirement or any other reason. Each Party shall be responsible for all the expenditures associated with its employees' work performance, including travel and other expenses.

Section 13. Labor Relations.

Nothing in this MOU will require any Party to abrogate any of its labor agreements.

Section 14. Liability.

Unless there is a separate agreement which provides differently, each Party is solely responsible for its own actions under this MOU.

Section 15. Communication and Media Relations.

The Parties have designated lead media relations contacts which are listed in Exhibit B. All responses to media inquiries, arrangements of media events or tours, press releases in connection with the Hudson Tunnel Project and other elements of the Gateway Program or related matters will be coordinated by the media leads before issuance or scheduling. The media leads will ensure that all Parties are informed in advance of media events and releases and will report periodically to the Executive Committee.

Section 16. Owners' Reservations.

The Parties reserve the right to fund, finance, maintain and manage their respective operations, real properties, intellectual properties and infrastructure in their sole discretion and nothing in this MOU is meant to diminish the Parties' rights in that regard.

Section 17. No Liability.

Neither the Commissioners or Directors of any Party, nor any officer, agent or employee thereof shall be charged personally with any liability or held liable under any term or provision of this MOU or because of its execution or attempted execution or because of any breach or attempted or alleged breach thereof or any obligation incurred hereunder.

Section 18. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall constitute an original agreement, and all of which taken together shall be deemed one (1) and the same document.

UNITED STATES DEPARTMENT OF
TRANSPORTATION

By:  _____

(Title): Secretary _____

NATIONAL RAILROAD PASSENGER
CORPORATION

By: _____

(Title): _____

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

By: _____

(Title): _____

NEW JERSEY TRANSIT CORPORATION

By: _____

(Title): _____

UNITED STATES DEPARTMENT OF
TRANSPORTATION

By: _____

(Title): _____

NATIONAL RAILROAD PASSENGER
CORPORATION

By:  _____

(Title): Stephen J. Gardner
Amtrak, Executive Vice President,

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

By: _____

(Title): _____

NEW JERSEY TRANSIT CORPORATION

By: _____

(Title): _____

UNITED STATES DEPARTMENT OF
TRANSPORTATION

By: _____

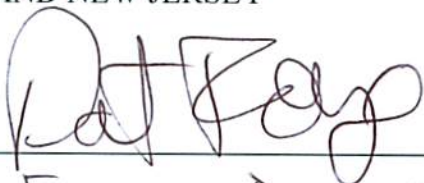
(Title): _____

NATIONAL RAILROAD PASSENGER
CORPORATION

By: _____

(Title): _____

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

By:  _____

(Title): Executive Director

NEW JERSEY TRANSIT CORPORATION

By: _____

(Title): _____

UNITED STATES DEPARTMENT OF
TRANSPORTATION

By: _____

(Title): _____

NATIONAL RAILROAD PASSENGER
CORPORATION

By: _____

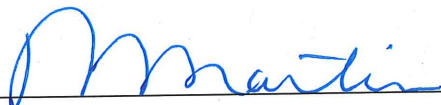
(Title): _____

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

By: _____

(Title): _____

NEW JERSEY TRANSIT CORPORATION

By:  _____

(Title): Dennis J. Martin, Interim Executive Director